

## PRINCETON PLANNING BOARD

In the Matter of the Application of	)	FINDINGS OF FACT
	)	and
<b>Bogy Construction, LLC</b> (60 Lafayette	)	CONCLUSIONS OF LAW
Court West) for Minor Subdivision	)	
Approval with Variances	)	File No. P2323-315MS
	)	Approval Granted: September 7, 2023

Be it resolved by the Planning Board of the Municipality of Princeton (“the Board”) that the action of this Board on September 7, 2023 in this matter is hereby memorialized by the adoption of this written decision setting forth the Board's findings and conclusions.

### BACKGROUND INFORMATION

1. Subject site. The subject site is identified as Block 8601, Lot 8 located in the R-2 zoning district of the former Township of Princeton. The 1.85-acre lot consists of a two-story framed dwelling with an attached accessory dwelling unit (ADU), a pool, a driveway, and parking areas. The lot is located on a cul-de-sac of Lafayette Court West, which is a private dead-end street accessed from Elm Road. An existing drainage ditch is located toward the western portion of the lot, which drains to Mountain Brook, an upstream tributary of Stony Brook.

### PROPOSED PLAN

2. The applicant is seeking approval to subdivide the existing 1.85-acre lot to create a 0.95-acre lot (Lot 8.01) and 0.90-acre lot (Lot 8.02). Proposed Lot 8.01 contains all existing site features including the principal dwelling, ADU, pool, driveway, and parking

areas. The applicant is proposing to demolish an existing hallway to separate the principle dwelling from the ADU. The existing pool is also noted to be removed. Proposed Lot 8.02 is a wooded lot where the applicant indicates a two-story single-family dwelling may be constructed with a new driveway and utilities to Lafayette Court West. A condition of this approval provides that the maximum FAR for each lot will be 12.5%. While the Applicant initially requested that a variance be granted from the Neighborhood Character Ordinance, which requires among other things that the garage, if it is part of the principal structure and is facing a side or rear of the property, shall be recessed at least 8 feet from the front façade, with the notice so providing, the Applicant withdrew that request. Its counsel stated that development on proposed Lot 8.02 would comply with the Neighborhood Character Ordinance. It sought 8 variances, 2 lot depth variances for each lot because each lot has two rear lot lines, lot area variances for each lot, and lot frontage variances for each lot.

#### RELIEF SOUGHT

3. The Applicant seeks minor subdivision approval to subdivide the property in question into two lots as described above.

In addition, the eight variances described above are necessary. They are described in more detail in the Variance section.

#### NOTICE AND HEARING

4. Proof of notice and publication were filed and found to be satisfactory. The Board had jurisdiction over the application.

5. The notice stated that the hearing would be held at the virtual meeting of the Board via Zoom scheduled for September 7, 2023. The application was heard on that date. At the hearing, the Applicant and all interested parties were given the opportunity to present evidence and to be heard.

## PLANS PRESENTED

6. At the hearing, the Board considered the following plans:
- Minor Subdivision Plan Sheets 1 through 5 prepared by Goldenbaum Baill Engineering Inc., dated December 28, 2022, revised April 13, 2023 and received April 14, 2023.

## MUNICIPAL REPORTS

7. At the hearing, the Board considered the following reports prepared by both municipal officials and bodies and consultants to the Board:

- Memorandum from Justin Lesko AICP, PP dated August 31, 2023
- Memorandum from Daniel Weissman, P.E. and Derek Bridger to the Board, revised August 30, 2023
- Letter from Gregory Sandusky, PE & LS dated August 14, 2023 regarding deficiencies in the subdivision plans

## EXHIBITS AND APPLICANT'S REPORTS AND SUBMISSIONS

8. At the hearing, the Board considered the following reports prepared by the Applicant's consultants and advisors and the following exhibits that were introduced as evidence during the course of the hearing:

- Exhibit PB-1 – Google aerial photograph of site area
- Exhibit PB-2 – Section of Municipal Zoning Map
- Exhibit A-1 – A slide presentation by John McDonough of 5 slides from the Mercer County GIS

- Exhibit A-2 – Chart showing that, of the other nine lots on Lafayette Court West, all are undersized and six are less than the 39,009 square feet proposed for proposed Lot 18.02
- Exhibit A-3 – Aerial drone photograph of the property in question
- Exhibit A-4 – Aerial drone photograph of the property in question and broader area
- Exhibit A-5 – Neighborhood Compatibility Chart showing that six of the nine lots are smaller than 39,009 square feet and that the other three, while larger, are also non-conforming

## TESTIMONY AND PUBLIC INPUT

9. The testimony presented by and on behalf of the Applicant were given by the following persons:

Richard Schatzman, Esq. represented the Applicant. Eric Rupnarain, P.E., its civil engineer; John McDonough, PP, its planner; and Francis Treves, R.A., its architect, testified on the Applicant's behalf.

The following municipal staff and professionals gave advice to the Board during the hearing:

Justin Lesko, AICP, PP; Daniel Weissman, P.E.; Derek Bridger; and Gerald J. Muller, Esq., its attorney.

10. The statements of the members of the public made during the course of the hearing may be summarized as follows: Three neighbors testified. Two raise questions about the impact of the development on the street and on what assessment had been done on street structure and noise.

## FINDINGS AND CONCLUSIONS RE: MINOR SUBDIVISION APPROVAL

11. The application has been reviewed in accordance with the criteria set forth in Sections 10B-226a-p of the Zoning Ordinance as follows:

(a) *Ecological Considerations. Pursuant to Section 10B-226(a) of the Ordinance, the development shall result in minimum impairment of the regenerative capacity of aquifers and other groundwater supplies, result in minimum degradation of unique land types and have minimal adverse impact upon the critical areas.*

Condition 14i requires that, prior to any development on proposed Lot 8.02, the Applicant obtained an NJDEP Freshwater Wetlands Absence Letter of Interpretation or Absence of Wetlands Interpretation.

If this condition is complied with, this criterion will be satisfied.

(b) *Landscape. Pursuant to Section 10B-226(b) of the Ordinance, the historic and natural character of the landscape shall be preserved, insofar as practical and environmentally desirable, by minimizing tree and soil removal. If the development of the site necessitates the removal of established trees, special attention shall be given to the planting of replacements or to other landscape treatment.*

The Applicant has indicated that construction of a single-family dwelling on proposed Lot 8.02 would require removal of 39 trees with a dbh of greater than eight inches. Under the Princeton ordinance, this would require 72 replacement trees.

Given Condition 14g, which requires that tree preservation be maximized, this condition is satisfied.

(c) Relation of Proposed Structures to the Environment. Pursuant to Section 10B-226(c) of the Ordinance, proposed structures are to be related harmoniously to themselves, the terrain, existing buildings, roads and historically significant features, if any.

The proposed lots are consistent in size with the neighborhood, there are no height variances sought, and the floor area ratio, as per Condition 14a, will be limited to 12.5%. Given this, a development of a single-family house on Lot 8.02 will be in harmony with the neighborhood.

For the foregoing reason, this criterion has been satisfied.

(d) Scenic, Historical, Archeological, and Landmark Sites. Pursuant to Section 10B-226(d) of the Ordinance, scenic, historical, archaeological, and landmark sites and features that are located on or adjacent to the proposed development shall be preserved and protected insofar as practicable.

The property is not located within an historic district and does not contain any state or federally designated sites.

For the foregoing reason, this criterion has been satisfied.

(e) Surface Water Drainage. Pursuant to Section 10B-227(e) of the Ordinance, a proposed development shall be designed to provide for proper surface water management through a system of controlled drainage.

The Applicant must conform to the Princeton Stormwater Ordinance with the qualification discussed in subparagraph (a) and Condition 14j.

Given this, this criterion has been satisfied.

(f) Driveway Connections to Public Streets. Pursuant to Section 10B-226(f)

*of the Ordinance, all entrances and exit driveways to public streets shall be located with due consideration for traffic flow and so as to afford maximum safety to traffic on the street on the public streets.*

No driveways to public streets are proposed under this application. The existing driveway for Lot 8.01 will remain with access to the cul-de-sac of Lafayette Court West. The proposed driveway that will serve Lot 8.02 will have similar access to Lafayette Court West.

Therefore, this criterion does not apply.

(g) Traffic Effects. Pursuant to Section 10B-226 (g) of the Ordinance, the site development proposal shall minimize adverse traffic effects on the road networks serving the area in question either existing or included in the Master Plan.

No significant additional traffic is anticipated in this subdivision as only one additional single- family residence is proposed.

This criterion therefore has been satisfied.

(h) Pedestrian and Bicycle Safety. Pursuant to Section 10B-226 (h) of the Ordinance, pedestrian and bicycle circulation shall be separated from motor vehicle circulation. Safe and convenient pedestrian circulation shall be provided on the site and its approaches. The pedestrian plan shall be designed to minimize adverse effects of vehicular traffic upon sidewalks and bicycle paths.

No changes or improvements to bicycle or pedestrian circulation are proposed in this application.

This criterion therefore does not apply.

(i) On-Site Parking and Circulation. Pursuant to Section 10B-226 (i) of the Ordinance, the location, width, and layout of interior drives shall be appropriate for the proposed interior circulation. The location and layout of accessory off-street parking and loading spaces shall provide for efficient circulation and the safety of pedestrians and vehicles.

The parking proposed is appropriate. Parking for proposed Lot 8.02 is to be provided via a garage and a driveway with access to Lafayette Court West. The existing dwelling on proposed Lot 8.01 will maintain its existing parking and driveway.

Given the above, the criterion has been satisfied.

(j) Utility Services. Pursuant to Section 10B-226 (j) of the Ordinance, the Applicant must achieve assurances that the necessary infrastructure and utilities are available from on-site, municipal, or private systems, including sanitary sewer, potable water, and irrigation water.

Utility services to proposed Lot 8.02 are shown to be underground, including gas, electric, sewer, and water services. Condition 14e requires that the Applicant coordinate with the appropriate utility companies to accommodate new services for the proposed dwelling. Utility services for Lot 8.01 are noted to remain. As per Condition 14f, separate utilities shall be provided for the detached ADU as future ownership of the ADU may differ from the lot owner.

Given the above, this criterion has therefore been satisfied.

(k) Disposal of Wastes. Pursuant to Section 10B-226 (k) of the Ordinance, there shall be adequate provision for the disposal of all solid, liquid, and gaseous wastes and for the avoidance of odors and other air pollutants.



Waste disposal for the residences will be serviced by the Princeton Municipal Solid Waste Collection Program. Recyclables will be serviced by the Mercer County Improvement Authority.

Given the above, this criterion has therefore been satisfied.

(l) Noise. Pursuant to Section 10B-226 (l) of the Ordinance, all applicable federal, state, and local regulations dealing with the control of outside noise which is expected to be generated at the site shall be complied with.

The Applicant has been advised that noise during and after construction must comply with municipal and state requirements.

This criterion has therefore been satisfied.

(m) Advertising Features. Pursuant to Section 10B-226 (m) of the Ordinance, the size, location, height, design color, texture, lighting and materials of the signs or outdoor advertising structures features shall not detract from the design of proposed buildings and structures of the surrounding properties.

None are proposed.

Given this, this criterion does not apply.

(n) Special Features. Pursuant to Section 10B-226(n) of the Ordinance, outside storage areas, service and machinery installations, service areas, truck loading areas, utility buildings and structures and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent any adverse effect upon the environment or nearby property.

None are proposed.

This criterion therefore does not apply.

(o) Waterway Corridors. Pursuant to Section 10B-226(o) of the Ordinance, site plans shall be designed so as to preserve from disturbance waterway corridors.

As discussed in subparagraph (a), the existing drainage ditch located on the lot is an upstream tributary of Stony Brook, which is a Category 1 stream, and the riparian zone must be revised to a 300-foot width per NJDEP regulations. The Applicant may seek to obtain an NJDEP Flood Hazard Area Applicability Determination or a ruling by the NJDEP that the drainage ditch on the subject property is not classified as a stream tributary but a ditch which does not require such a buffer since the Board and Applicant recognize that the NJDEP has the final determination of this designation.

(p) Special Technological Impacts. Pursuant to Section 10B-226(p) of the Ordinance, where the proposed site development involves emissions, noise, wastes, materials, equipment, or other hazards which require specialized expertise to evaluate, the administrative officer shall refer the Applicant's submissions to the municipal-retained environmental consultant (or to several consultants where more than one field of expertise is involved), requesting an independent review of the environmental impact of the project to be set forth in a report to the board having review jurisdiction. The cost of these studies shall be charged to the Applicant's escrow account established pursuant to section 10B-32.

None are proposed.

This criterion therefore does not apply.

12. Conclusion re minor site plan approval. The Board finds that, with the conditions imposed and the variances granted, the Applicant has satisfied all municipal subdivision standards. Minor subdivision approval, accordingly, is granted.

## FINDINGS AND CONCLUSIONS RE: VARIANCES

13. The Applicant has applied for eight variances. The variances and the Board's action on them are as follows.

(a-b) Variances: Sections T10B-246 and T10B-255 of the Princeton Code provide that the minimum lot size in the R-2 zone is 1.5 acres.

(a-b) Variances granted: The testimony supports the two c(2) variances sought. Granting the variances would advance Municipal Land Use Law purpose "a," which is to encourage municipal action to guide the appropriate use or development of land and "g," which is to provide sufficient space in appropriate locations for residential as well as other uses according to their respective requirements. The new lot will be in harmony with the other lots on Lafayette Court West and represents an efficient use of land. There will not be an adverse effect upon the neighborhood and, with Condition 14d the neighborhood will benefit because of the resurfacing of the private road as an additional advantage as an extra for the neighborhood. The c(2) positive criteria are therefore satisfied.

The negative criteria are satisfied as well. The Applicant has demonstrated that, for the reasons given above, these variances can be granted without substantial detriment to the public good. Nor will granting them impair the intent and purpose of the zone plan, since Master Plan goals are advanced, and of the zoning ordinance, since the zoning ordinance when six of the lots were in the borough, permitted the smaller lots. Further, the conditions imposed by the Board ameliorate any of the adverse effect of the negative impacts of the variances granted.

Accordingly, variances a and b are granted.

(c-h) Variances: Sections T10B-246 and T10B-255 require a lot depth of 175 feet, while the lot depths for proposed Lot 8.01 are 152.47 feet and 120.01 feet and for Lot 8.02 are 167.77 feet and 120.01 feet. Two lot depth variances are needed for each lot because each lot has two rear lot lines and lot depth is measured between the front and rear lot lines. Sections

10B-246 and 10B-255 require a minimum frontage of 131.25 feet, while 116.02 feet is the lot frontage for proposed Lot 8.01 and 125.66 feet for proposed Lot 8.02. The minimum lot frontage of 175 feet per 10B-246 otherwise required may be reduced as per 10B-247 to 75% of the required minimum lot with the frontages of curved alignments with a outside radius of less than 500 feet, which is the case here, and the lot frontage requirement has, accordingly, been reduced to 131.25 feet.

(c-h) Variances granted: The testimony supports the six c(2) variances sought. Granting the variances would advance the same Municipal Land Use Law purposes as are set forth for the a-b variances, and granting them generates the same benefits. The detriments are not substantial for the reasons also given above. The positive criteria are therefore satisfied. The negative criteria are also satisfied for the same reasons as set forth above for variances a-b.

Accordingly, the six variances are granted.

#### CONDITIONS REQUIRED

14. The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the Applicant's legitimate requirements, the relief granted is subject to the following conditions:

##### Zoning Provisions

- a. The proportional FAR shall not be available to the developer for either lot, and the maximum FAR shall be 12.5% for Lot 8.02.
- b. The garage setback for the garage on Lot 8.02 shall comply with the applicable Princeton ordinance T10B-255.2(C)(1)(a).

- c. The Zoning Table on Plan of Minor Subdivision, Sheet No. 2, shall be updated to reflect the values set forth on page 2 of 6 of the Weissman/ Bridger memorandum and the 12.5% FAR.

#### Infrastructure and Utilities

- d. Lafayette Court West shall be repaved from Elm Road to its terminus in a manner satisfactory to the Land Use Engineer before a certificate of occupancy for a house on proposed Lot 8.02 is issued. Given the condition of the road, a rational nexus exists between construction on Lot 8.02 and resurfacing, which would almost certainly be necessary. Although Lafayette Court West is a private road, N.J.S.A. 40:55D-42 could and should be applied. The Applicant's attorney agreed with this and agreed with the resurfacing requirement.
- e. The Applicant shall coordinate with the appropriate utility companies to accommodate new services for the dwelling when developed on proposed Lot 8.02.
- f. As a hallway connecting the existing principal dwelling and ADU is proposed to be removed, separate utilities shall be provided for the detached ADU.

#### Landscape

- g. The Applicant shall work with the municipal arborist to preserve as many of the trees shown to be removed as possible. The Applicant's attorney agreed to this condition.
- h. The Applicant shall file for a tree removal permit prior to the removal of any trees on the proposed Lots.

#### Stormwater management

- i. The Applicant shall secure an NJDEP Freshwater Wetlands Presence/Absence Letter of Interpretation prior to any development of Lot 8.02.

- j. There is a stream onsite that was originally a drainage ditch and is classified as a Category 1 water as it is an upstream tributary of Stony Brook. The plans shall be revised to reflect a 300-foot riparian zone. The Applicant may seek to obtain an NJDEP Flood Hazard Area Applicability Determination or obtain a ruling by the NJDEP that the said drainage ditch is not classified as a stream tributary but a ditch which does not require such a buffer since the Board and Applicant recognize that the NJDEP has the final determination of this designation. Any development within the riparian zone is subject to the NJDEP Flood Hazard Area Control Act.
- k. The Applicant shall comply with the Princeton Stormwater Ordinance for any development of proposed Lot 8.02 and may not take credit for removal of impervious surfaces on proposed Lot 8.01.
- l. The developer shall treat the runoff from the new driveway.
- m. The Applicant shall file an Engineering Site Plan Review Application with the Engineering Department prior to filing a Zoning Permit for the development on proposed Lot 8.02.

Other

- n. Pins are to be set at the new lot line between Lots 8.02 and 8.01. The setting of these pins shall be certified by the surveyor of record and bonded until installed.
- o. Lot 8.01 will remain as 60 Lafayette Court West. Lot 8.02 will be assigned as 56 Lafayette Court West. The subdivision plat shall be updated accordingly.
- p. Legal descriptions for new Lots 8.01 and 8.02 shall be submitted for review by the Municipality's Land Surveyor consultant.
- q. The subdivision plat shall be provided to the Engineering Department in digital format to facilitate updates to the tax map and shall include two pairs of New Jersey State Plane Coordinates.
- r. The applicant shall submit to the Mercer County Planning Board for approval.

- s. Deed documents shall be approved by the Planning Board attorney before filing with the Mercer County Clerk.
- t. The applicant shall comply with the comments of the Municipality's Land Surveying Consultant review letter dated August 14, 2023.

## CONCLUSION

Based on the foregoing, the Board at its September 7, 2023 meeting voted to approve the plans with revisions made therein and as supplemented and modified by the exhibits subject to the conditions and to be revised in accordance with the conditions set forth herein.

Adopted:

Vote on Motion: 9/7/2023

FOR: Wilson, Capozzoli, Chao, Cohen, McGowen, O'Donnell, Quinn, Tech-Czarny, Taylor

AGAINST: No one

ABSTAIN: No one

***ABSENT: Sacks and Bottigheimer***

Vote on Findings:

FOR:

AGAINST:

ABSTAIN: